

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34**

SPECTRUM PLASTICS, AN ASSOCIATED  
SPRING COMPANY, A DIVISION OF BARNES  
GROUP

Employer<sup>1</sup>

and

INTERNATIONAL UNION OF AUTOMOBILE,  
AEROSPACE, AGRICULTURAL, IMPLEMENT  
WORKERS OF AMERICA, UAW

Petitioner

Case No. 34-RC-2008

**DECISION AND ORDER AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I find that: the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction; the labor organization involved claims to represent certain employees of the Employer; and a question affecting commerce exists concerning the representation of certain employees of the Employer.

The Petitioner seeks to represent a unit of approximately 60 full-time and regular part-time production and maintenance employees at the Employer's Ansonia, Connecticut facility. At the hearing, the Petitioner amended its petition and now seeks to also represent a separate unit consisting of three office clerical employees in the

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The name of the Employer appears as amended at the hearing.

following classifications: receptionist/accounts payable, materials coordinator, and production scheduler/expediter.

The parties have agreed to include in the production and maintenance unit approximately 50 employees in the following job classifications: moldmakers, apprentice moldmakers, molding technicians, molding technician apprentices, operators, operator inspectors, facilities maintenance, maintenance electrician, maintenance repair, material handler, warehouse lead person, packer/shipper, technician trainer, and operator group leader. The parties have also agreed to exclude from the production and maintenance unit all salaried employees and those employees in the following job classifications: engineering assistant, production planning assistant, customer service representative, reel-to-reel specialist, automation systems specialist, facilities manager/maintenance project specialist, and programmer analyst.

As a result of the parties' agreement noted above, the remaining issues in this case consist of the following. The Employer would exclude from the production and maintenance unit the molding supervisors, working foremen, and the shipping supervisor as supervisors within the meaning of the Act, and would exclude the cell coordinator, quality assurance analysts, senior quality assurance analysts, and the shipping assistant/specialist based upon their lack of community of interest with employees in the petitioned-for unit and, with the exception of the shipping assistant/specialist, as managerial employees. The Employer would also exclude the materials coordinator and production scheduler/expediter from both the production and maintenance unit and the office clerical unit, due to their lack of community of interest with employees in those units and because they are managerial employees, and contends that the remaining one-person office clerical unit consisting of the receptionist/accounts payable employee would not be an appropriate unit under the Act. The Petitioner argues alternatively that if the materials coordinator and production scheduler/expediter are found not to be office clerical employees, they should be considered plant clerical employees and included in the production and maintenance unit, with the remaining receptionist/accounts payable employee provided the opportunity to vote whether or not to be included in the production and maintenance unit. The Petitioner is willing to proceed to an election in any units found appropriate.

For the reasons noted below, I find that it is appropriate to include the cell coordinator, quality assurance analysts, senior quality assurance analysts, shipping assistant/specialist, production scheduler/expediter, and materials coordinator in the production and maintenance unit because they share a sufficient community of interest with the petitioned-for employees to warrant their inclusion, and they are not managerial employees. I further find that the molding supervisors, shipping supervisor, and working foremen are not supervisors, and I shall include them in the production and maintenance unit. Finally, because I have found that the materials coordinator and production scheduler/expediter should be included in the production and maintenance unit, I will dismiss the amended petition to the extent it seeks a one-person office clerical unit.

### **1. Background**

The Employer designs and manufactures high precision injection mold plastic parts for customers in the technology and telecommunication industries. Business expanded rapidly in the nineties, but declined over the past two years. The workforce peaked in about December 2000 at 190 hourly employees, but declined by early 2002 to about 105, and is down to its current level of about 60.

Division Manager Pierre Dziubina is primarily responsible for overall production at the Ansonia facility. Reporting directly to Dziubina are Vice President of Manufacturing David Kelly and Vice President of Engineering Edward Flaherty. Flaherty had been responsible for both manufacturing and engineering for a number of years up until 2000, but as a result of the rapid growth in the business, he was assigned by Dziubina to concentrate on engineering, and Kelly was hired in February 2001 to oversee manufacturing.

As a result of the downturn in business, Kelly appointed a team of managers to review all job descriptions and reinstate the cell concept to manufacturing that had been used by the Employer's predecessor. This review resulted in a manufacturing reorganization in early 2002. Peter Spadafino, who had been production manager on the weekends, became production manager for all shifts, including the weekends. Spadafino reports directly to Kelly. Materials Manager Louis Szucs also reports directly to Kelly. He oversees the work of the material handler and the packer/shipper, who the

parties have agreed to include in the production and maintenance unit. Also reporting directly to Szucs are the following disputed classifications: materials coordinator, production scheduler/expediter, cell coordinator, shipping supervisor, and shipping assistant/specialist.

The employees who the parties have agreed to include in the production and maintenance unit are all under the jurisdiction of either Flaherty or Kelly. There are no disputed classifications under Flaherty's jurisdiction, which includes the Tool Room. Reporting directly to Flaherty is Tool Room Manager Butch Farina, who directly supervises the seven moldmakers the parties have agreed to include in the production and maintenance unit. Flaherty is also responsible for the Project Management and Design Engineering groups, all of whose personnel the parties have agreed to exclude from the units. The maintenance employees who the parties have agreed to include in the production and maintenance unit report directly to Kelly. The disputed quality assurance analysts also report directly to Kelly.

The largest group of hourly employees work in the Production Department under Spadafino's direction. The Production Department classifications in dispute are the two molding supervisors, Frank Rinaldi and John Bioski, who work on first shift, and the two working foremen, George Clark and Mike Kozlowski, who work on the second and third shifts, respectively. The disputed molding supervisors, disputed working foremen, and the operator leader, who the parties have agreed to include in the production and maintenance unit, report directly to Spadafino.

The reintroduction of the cell concept noticeably impacted the structure of manufacturing. According to Kelly, its focus is on building a team concept. Everything in the plant is meant to support the cell system. The core idea is to break down the hierarchal command structure so that everyone gets involved in the decision-making process. Kelly believed that the various departments were too separate and not working together, and he wanted employees to assist in different areas. Thus he wanted the ability to move employees between work areas, and from cell to cell. The introduction of the cell concept resulted in the elimination of approximately twenty job classifications, along with the modification or creation of other job classifications. Cross-training of employees is also a central component of the cell concept.

All hourly employees punch a time clock, are subject to the same terms and conditions of employment, and take lunch and break periods of the same duration in the same areas of the facility, and utilize the same locker room. First shift hours are 7:00 am to 3:30 pm; second shift hours are 3:00 pm to 11:00pm, and third shift hours are 11:00 pm to 7:00 am. Office hours are 8:00 am to 4:30 pm.

## **2. The layout of the Ansonia facility**

The office is located across the front of the building, and it requires a special pass to get into the office area from the other work areas. Chief Financial Officer David Greenwood, Dziubina, Kelly, Flaherty, and other salaried personnel who the parties have agreed to exclude from the units have offices in the office area, along with the receptionist/accounts payable clerk.

Behind the office area, and separated by secure doors, are a variety of areas. The employee entrance is on the left side of the facility, and it opens to a long corridor. To the immediate right upon entrance is the cafeteria, which is open to all employees. Next are the employee locker rooms, with restrooms nearby. The remainder of the facility consists of various work areas. Proceeding down the hallway on the right is the Engineering Department, all of whose personnel the parties have agreed to exclude from the units. Next is an area that contains the separate offices of Szucs and Spadafino, two project managers who the parties have agreed to exclude, and the disputed production scheduler/expediter. The next work area on the right is Quality Control, where the disputed quality assurance and senior quality assurance analysts work. The quality engineer, who the parties have agreed to exclude from the units, has a separate office in that location. Proceeding to the right is a training area, a storage area, and the “reel to reel” storage area. The disputed materials coordinator has a work area in that location as well as a desk in the Shipping Department.

The four production cells are located across the corridor from these work areas. To the left of the cells is the Tool Room. Towards the back of the building on the left is the shipping and receiving area, which is adjacent to the Shipping Department. To the right of the shipping and receiving areas is the warehouse. In the far right back of the building is the maintenance area.

### **3. The design process**

The Employer tailors a precision production method for each part ordered by its customers. When the Employer is contacted by a customer about making a new part, a variety of employees from several different departments determine the feasibility of its production and prepare a quote for the customer. This includes employees from engineering, customer service, quality assurance, and automation, as well as a project manager, the tool room manager, the production scheduler/expediter, and at times a molding supervisor. Once the customer and the Employer agree on a quote, the Engineering Department then designs the “molds” or “tools” which will be used to create the product. The designs are then transmitted electronically to the moldmakers, who make the mold that eventually will be inserted into the production machinery. After the mold is developed, it is put through a “First Article Inspection.” The mold is then taken to one of the four cells for a sample run. The engineering manager, quality control manager, and either a molding supervisor functioning as a “process engineer” or the automation manager have to approve the part. After the sample run is approved, the mold is ready for production in the cells.

### **4. The production process**

The Employer has a number of steady customers, and maintains over a thousand molds to manufacture parts for such customers. The cells are set up according to the type of process used to manufacture a part. There are two primary types of parts: all plastic loose pieces, and a combination of plastic and metal. The loose pieces are produced by pouring molten plastic into a mold. The Employer produces highly intricate small plastic parts in this manner, which are high value added products due to the requisite engineering. The combined plastic and metal parts are made by applying molten plastic to metal. This requires a more technologically complex process called “reel-to-reel”, whereby the metal is fed into the molding machines. The metals used in the process are quite expensive, and are stored in a special reel-to-reel storage area with restricted access. A third type of part is manufactured by use of an insert mold, where a part is injected into the mold machine.

The Employer emphasizes the maintenance of quality standards in its manufacturing process, and the timely meeting of delivery dates. To accomplish this,

the disputed production scheduler/expediter reviews each order and investigates whether the materials and labor will be available to meet the time target. Scheduling is done both on a weekly and a daily basis. Each Wednesday Spadafino meets with the production scheduler/expediter, Szucs, customer service personnel, and occasionally the disputed shipping supervisor, to schedule production and delivery. After the meeting the production scheduler/expediter prepares a rolling schedule for the following six weeks that sets forth what work is to be performed each day on each molding machine. The six-week schedule can be adjusted daily depending on such things as machinery breakdown, lack of materials or labor, and customer needs. Such adjustments are made during a morning meeting held each day that includes Spadafino, Szucs, the production scheduler/expediter, the customer service manager, a quality assurance analyst, and a customer service representative. In addition, each of the disputed molding supervisors separately attends the meeting for about 15 minutes. The meeting determines what is to be run on each machine during that day. During the afternoon the production scheduler/expediter issues a "message sheet" that updates what is to be run on each machine for the remainder of that day, including the second and third shifts. The message sheet gets passed on to the disputed working foremen or other molding technicians at the change of each shift

The four cells, which are separated by open corridors, contain different types of machines for different products and specific customers. Cell One performs primarily reel-to-reel and some insert molding for two major overseas customers. Cell Two performs primarily reel-to-reel molding for two other major customers, and also manufactures some loose pieces. Cell Three is dedicated to reel-to-reel molding for various companies, and contains different types of equipment from the other three cells. Cell Four performs both reel-to-reel and loose piece molding.

There are approximately eight operators and one operator group leader on the first shift. They operate the machines in the cells and input data regarding the product they produce. They can be assigned to work on machines in any of the four cells, although some routinely work on the same machines most of the time. The operator group leader, who the parties agreed should be included in the production and

maintenance unit, assigns operators to particular machines in each of the cells.<sup>2</sup> Such assignments are generally rotated among the various operators. The operator group leader also assigns operators for the second and third shifts. She reports directly to Spadafino. Her job description indicates that she is also responsible for assisting Spadafino in evaluating the operators. She also schedules the operators' lunches and breaks.<sup>3</sup>

The disputed molding supervisors, disputed working foremen and molding technicians are responsible for setting up and starting the molding machines, which are actually run by the operators in each cell. The molding technicians fix quality-related problems on the machines, and get parts approved. If necessary they will ask for help from the maintenance department if a machine breaks down. There are also two operator inspectors on the day shift.<sup>4</sup> The operator inspector is a new quality control position created as part of the reorganization. In addition to running the machines, the operator inspectors visually inspect parts during production to determine whether quality standards are being maintained. They are also responsible for product pick-up and data entry for each production run from the initial scheduling through final packaging.

Rinaldi and Bioski are the molding supervisors. Rinaldi is responsible for Cell One and Cell Two, Bioski for Cell Three and Cell Four. A molding technician and a technician apprentice are also assigned to Cells One and Two. However, molding technician John Crews performs all the technician work in Cell Three, and Bioski and molding technician Frankie Lee share the technician work in Cell Four. There is a desk in each cell where the production scheduler/expediter will leave the daily message sheet if the molding technician or molding supervisor is not available. The molding technicians and molding supervisors are also responsible for transmitting information to the next shift. To accomplish this function they may verbally discuss what is being run

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<sup>2</sup> The work which the operators perform on each machine is determined by the disputed production scheduler/expediter, as described above.

<sup>3</sup> Notwithstanding the parties' agreement to include the operator group leader in the production and maintenance unit, as the record indicates that she may possess and exercise supervisory authority within the meaning of Section 2(11) of the Act, I shall permit her to vote subject to challenge in the election directed herein.

<sup>4</sup> The individual currently assigned as the operator inspector for Cell One and Cell Two, Steve Mackin, is actually a quality assurance analyst who has occupied the operator inspector position for the past six months.



on the various machines in their cells with the incoming working foremen and molding technicians. They also transmit the information through the “message sheet”, or fill out a separate “shift change report” to communicate with the incoming shift about the current status of the machines and what needs to be done. Molding technicians on the second and third shifts transmit such information to the next shift in a similar manner.

All employees who work in a cell are responsible for identifying and reporting production related problems. If either a molding supervisor, molding technician or operator inspector are informed or discover there is a problem with a particular mold, the inspector will work with the technician to try and resolve it. If they are unsuccessful, either the technician or the molding supervisor, along with the inspector, will “pull the run” and fill out a process rejection report. The report and the mold are eventually forwarded to the tool room for repair.

The second and third shift cells are set up differently. A disputed working foreman is assigned to each shift. George Clark is currently the working foreman on the second shift, and Mike Kozlowski is the working foreman on the third shift. They each perform molding technician work. Two molding technicians, one technician apprentice, and five operators work on each shift. There are also three operator inspectors on the second shift and four on third shift.

## **5. Supervisory Issues**

It is well established that the burden of proving supervisory status is upon the party asserting it. *Pine Brook Care Center, Inc.*, 322 NLRB 740 (1996), and cases cited therein at footnote 3. As described in detail below, I find that that the Employer has failed to meet its burden of establishing that the molding supervisors, working foremen, and the shipping supervisor are supervisors within the meaning of Section 2(11) of the Act.

### **a. Molding Supervisors**

As noted above, Frank Rinaldi and John Bioski are the molding supervisors, both of whom work on the first shift. They were each promoted to that newly created position on October 30, 2000. At the time of his promotion, Bioski was the molding leadperson, a position to which he had been promoted only a month earlier. They each received a \$1 per hour wage increase at the time of their promotion. Bioski and Rinaldi are each paid

about 40% higher than other molding technicians, but less than mold makers with similar seniority. The large disparity between their pay rate and that of other molding technicians predated the additional \$1 per hour increase, and appears to be based on their skill level and experience. Prior to becoming a leadperson, Bioski had been a molding technician for over 15 years. During that period he was the lead molding technician on the third shift, but became a molding technician when he went to first shift. Rinaldi has worked for the Employer for over 10 years.

When Bioski was promoted to molding supervisor in October 2000, he was informed by then Production Manager Dick Tonucci that the reason for the promotion was the company's rapid growth, and that there was "no way" he (Tonucci) could handle and train the new employees. However, as noted above, that rapid growth ceased in 2001, and the workforce steadily declined thereafter.

Bioski was sent to "first time supervisor" and "sexual harassment" training in early 2001. The "first time supervisor" course emphasized a teamwork approach rather than discipline. Rinaldi also attended sexual harassment training.

The molding supervisors spend most of their time performing molding technician duties. As the most skilled and experienced technicians on the first shift, they are responsible for dealing with any problems that arise in their assigned cells. In this regard, the other molding technicians will come to them with problems and request their assistance. They also "troubleshoot" and make suggestions for improvements with regard to new and existing jobs. As noted above, the molding supervisors also perform an essential function in the design process by setting up the initial test run for a new mold, which includes programming the machine for the run. They also sign off on the "First Inspection Reports" as "process engineers." In this regard, "process engineer" refers to a person with technical experience, and does not refer to an engineer in the professional sense. Moreover, Bioski performed this function before being promoted to molding supervisor.

With regard to the assignment of work, as noted above, the record shows that since the reorganization, the Employer uses a multi-tiered approach to maintaining quality and meeting time targets in the cells. Thus, the operator group leader directly

assigns the operators to their machines.<sup>5</sup> The operator inspectors routinely inspect the parts produced by the operators, and intervene in the production process if there is a problem. Both the operator group leader and the operator inspectors report directly to Spadafino. Thus, the only employees to whom the molding supervisors directly assign work are the molding technicians and apprentice technicians assigned to their cells on the first shift. In this regard, Bioski works in Cell Four with molding technician Frankie Lee, and he divides the technician work between himself and Lee. Molding technician John Crews performs all the molding technician work in Cell Three, so there is nothing for Bioski to assign to him. Rinaldi works with one molding technician covering Cells One and Two, and divides the technician work between himself and that technician. As noted above, the priorities as to what needs to be done on each machine are determined at the daily production meeting.

With regard to the transfer of operators between cells, the Employer presented testimony that Bioski had a problem with a particular operator in Cell Four who was “making a mess” at a particular machine. Bioski requested that another operator be reassigned back to Cell Four. Spadafino, however, chose to speak directly with the offending operator to try and resolve the problem. When it was not resolved, and Bioski again complained about the situation, Spadafino switched the two operators. Without more, this incident shows that Bioski was not able to transfer the employee on his own, and that Spadafino did not act at Bioski’s request, but made the transfer only after his own intervention failed to rectify the problem. Moreover, when Bioski repeatedly asked Spadafino to remove another employee, operator Linda DiCapua, from his cell, that request was never acted on before DiCapua quit. In another instance, Bioski asked Spadafino to assign operator Paul Campano to Cell Four. Spadafino only partially granted the request, and Campano has instead rotated in and out of Cell Four since that time. The foregoing establishes that issues involving the assignment of operators among the cells are decided by Spadafino based on his own independent review of the situation.

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<sup>5</sup> As noted above in footnote 3, I have decided to permit the operator group leader to vote subject to challenge in the election directed herein.

The Employer also relies upon a meeting held with Bioski and Rinaldi at the time of the reorganization to establish that the molding supervisors can effectively recommend a change in job assignments. In this regard, Kelly and Spadafino were concerned about the molding supervisors' reaction to the reorganization and the reintroduction of the cell concept. In order to allow them express their concerns in an informal setting, they met with Bioski and Rinaldi away from the facility in a casual social setting. At this meeting Bioski recommended that maintenance employees, who report directly to Kelly, be regularly assigned duties in the cells. Although two maintenance employees were subsequently given some regular duties in the cells, they are not under the direction of the molding supervisors. Moreover, it is not unusual for molding technicians to request assistance from the maintenance department when machines break down.

Although the molding supervisors also assign molding technicians to perform preventative maintenance, the record reveals that the preventative maintenance schedule for each machine is issued by Facilities Manager McQuillan. Moreover, following the last major layoff, the molding technicians from all three shifts in Cell Four agreed among themselves how to redistribute the preventative maintenance assignments for their cell, and technician Frankie Lee prepared and posted the new assignment list.

With regard to granting time off, it is undisputed that employees request time off from Spadafino, not the molding supervisors. Moreover, the record does not support the general testimony proffered by the Employer that the molding supervisors have the authority to grant employee requests to use vacation time. In this regard, Spadafino maintains the requisite vacation request forms, and he is the one who signs off on them. Molding technicians who want to take vacation time either go directly to Spadafino, or ask the molding supervisor to go to Spadafino with their written requests. The molding supervisors do not know the scheduled vacations or operating needs in the other cells, and thus Spadafino reviews the needs of all the cells before granting any vacation request.

There is also other evidence that undercuts the Employer's assertion that the molding supervisors may grant time off to employees. In this regard, when Bioski

complained to Spadafino about the attendance problems of molding technician Crews, it appears that Spadafino did not inform Bioski that he had already worked out an understanding with Crews about his attendance due to a personal problem. In addition, one of the only two written warnings issued by Spadafino since he became the production manager was given to a molding technician for taking time off without making "direct contact" with Spadafino.

With regard to authorizing overtime, the record reveals that overtime needs are generally determined in the daily production meetings. Overtime is not mandatory, and if there is to be weekend overtime work, the molding supervisors ask the molding technicians if they want to work. Certain molding technicians will be asked first because the overtime is to be done on the machines for which they are primarily responsible. Moreover, Spadafino keeps track of overtime to insure it is being evenly distributed. While the Employer presented general testimony that the molding supervisors have the authority to authorize employees to work overtime into the next shift, Bioski testified that if he didn't finish a job by the end of his shift, and if a customer was present for that job, he would ask Spadafino if he wanted him to work overtime to finish the job. With regard to asking other employees to work over into the next shift, Spadafino admitted that on the one occasion he was aware of that employees were asked to work into the next shift, Bioski came to him and asked if he could have a third shift molding technician stay on to help first shift technician Lee because there was a lot of work to do. Thus, Bioski clearly sought Spadafino's permission to authorize such overtime.

With regard to recalling employees from layoff, the Employer presented testimony that after a third shift molding technician in Cell Four was laid off, there were problems in the cell. The problems, in Spadafino's own words, were "self-evident", and were the subject of discussions in the daily production meetings. Bioski told Spadafino that the problems would be corrected if the technician was recalled. Spadafino then recommended to Kelly that the laid off technician be recalled. The fact that Bioski pointed out the solution to an obvious problem in his own cell, without more, does not establish that Bioski, much less Rinaldi, has the authority to effectively recommend the recall of laid off employees.

With regard to hiring, Bioski will occasionally show a job applicant around the plant, question the applicant about their technical skills, and relay what he learned to management. However, in the one instance where he recommended that an applicant not be hired because of his lack of knowledge of the machines, the applicant was hired.

With regard to disciplining employees, neither Bioski or Rinaldi have ever issued any disciplinary warnings. The molding supervisor's job description is silent regarding their disciplinary responsibility, and only indicates that the molding supervisor is to "inform the Molding Manager of any personnel issues." While Spadafino admitted that he alone issues warnings in his area of responsibility, he asserted that the molding supervisors may issue employees "conversational verbal warnings" as the first step of the Employer's progressive discipline procedure. In this regard, Spadafino admitted that the molding supervisors normally come to him if they experience a problem with an employee, and that they do not want to be involved in disciplining employees. Moreover, when Bioski complained to Spadafino about employees reporting late to work, Spadafino specifically told Bioski that it was not in his authority to do anything about it, that it was Spadafino's job. When Bioski complained about the attendance of one particular operator in his cell, and how it was placing too great a burden on the remaining operator, Spadafino disagreed with him and took no action.

In addition, the record establishes that since the reorganization Spadafino has assumed authority for issuing all disciplinary notices in the production department, and that he considers the disciplinary role of the molding supervisors to be that of verbally discussing problems with employees. Moreover, Kelly testified that the Employer now emphasizes counseling employees, and not issuing discipline, as part of the Employer's team approach to problem solving. Only two disciplinary notices have issued since the reorganization, neither of which appear to involve the molding supervisors.

With regard to evaluating employees, the Employer proffered two employee appraisal forms that Rinaldi signed in 2001. These forms pre-date the reorganization and Spadafino's elevation to Production Manager. Each appraisal was a three-month review of a recently hired probationary employee, one a technician and one a "set-up operator". However, former Production Manager Tonucci filled out the sections that actually rated performance and assigned points, and there is no evidence that Rinaldi

did anything other than sign the appraisal that Tonucci had prepared. Moreover, the area on the forms indicating changes in job status or wages are blank. Thus, there is no evidence that these appraisals affected or were designed to effect any changes in employee wages or job status. Spadafino also admitted that he has prepared all three month performance appraisals since he became production manager, and that the molding supervisors had no role in the preparation of the annual appraisals that were issued to all employees in early 2002.

Although the molding supervisors sign accident reports that identify them as “supervisor”, the report simply relates the facts with regard to an accident, and what was done. It contains no recommendations or decisions regarding the accident.

Based upon the above and the record as a whole, I find that the Employer has failed to meet its burden of establishing that the molding supervisors are supervisors within the meaning of Section 2(11) of the Act. In reaching this conclusion, I note that the molding supervisors do not exercise independent judgment in assigning and directing the work of other employees, but rather serve as a conduit for orders and directions from higher management, and otherwise lack any of the statutory indicia of supervisory authority. See, e.g., *Quadrex Environmental Co.*, 308 NLRB 101 (1992); *Quality Chemical, Inc.*, 324 NLRB 328, 330 (1997); *S.D.I. Operating Partners*, 321 NLRB 111 (1996); *Hydro Conduit Corp.*, 254 NLRB 433 (1981). The molding supervisors are highly skilled employees whose responsibility for directing and assigning work flows from their greater skill and experience rather than their supervisory authority. *S.D.I. Operating Partners*, supra. They are conduits of the decisions made with regard to the production schedule, which determines all the work that is to be performed in the cells. *Quadrex Environmental Co.*, supra. Moreover, such work is performed on the machines in accordance with pre-established standards, and various other personnel monitor the production process to determine whether those standards are met. Thus, the primary job of the molding supervisor is to perform molding technician duties relative to the machinery in the cells for which they are responsible, and their incidental assignment of work to cell employees is limited to that which has already been scheduled and assigned by their superiors, with any further assignments and changes in assignments being routine in nature and governed by practical

considerations which do not require the exercise of independent judgment. See *Millard Refrigerated Services, Inc.*, 326 NLRB 1437 (1998); *Byers Engineering Corp.*, 324 NLRB 740 (1997). Finally, their counseling duties and sporadic involvement in the evaluation of employees is insufficient to confer supervisory status. See *Willimette Industries, Inc.*, 336 NLRB No. 59 (10/1/01); *Feralloy West Corp.*, 277 NLRB 1083 (1985); *Chicago Metallic Corp.*, 273 NLRB 1677, 1688-1694 (1985).

Accordingly, I shall include the molding supervisors in the production and maintenance unit.

**b. Working Foremen**

The working foreman position was first filled on September 11, 2000, when Joseph Krivensky and Michael Kozlowski were each promoted to the position for the second and third shifts, respectively. There are no working foremen on the first shift. Krivensky and Kozlowski each received a \$1 per hour raise at the time of their promotion. Prior to that time, lead molding technicians performed the functions of the working foreman. Because Krivensky has been on leave for an unspecified period of time, George Clark is currently the working foreman on the second shift. Clark has been a molding technician and lead molding technician on second shift for many years. Both Clark and Kozlowski attended a course entitled "Criticism and Discipline Skills for Managers" in January 1999, which was before the creation of the working foreman position. Kozlowski also attended a sexual harassment seminar in March 2001.

In addition to Clark and Kozlowski, who both continue to perform their regular molding technician duties, there are approximately 12 employees working in the four cells on both the second and third shift. This includes two molding technicians, one technician apprentice, and five operators on each shift, plus three operator inspectors on the second shift and four on third shift. Although Clark's molding technician duties on the second shift are limited to Cell's One and Two, the record does not reflect whether Kozlowski's molding technician duties on the third shift are limited to particular cells.

There are no other supervisory or management personnel at the facility on either shift. However, the phone numbers for Spadafino and other managers and directors are prominently posted, and Clark and Kozlowski have been instructed to contact those individuals in the event of a problem.



As noted above, the operators' schedules and assignments are determined by the operator leader during the first shift. Moreover, the operator inspectors on second and third shift report directly to Spadafino. Thus, the working foreman on each shift are limited to directing the work of two molding technicians and a technician apprentice, in addition to performing their normal molding technician duties. Otherwise, the working foremen are generally responsible for insuring that the employees assigned to their shift are performing their work in accordance with the established schedule. In this regard, Clark receives the "message sheet" directly from molding supervisor Rinaldi regarding Cell's One and Two. As noted above, the molding technicians who work in Cells Three and Four on the first shift pass on their "message sheet" directly to the molding technicians coming on shift for those cells. The working foremen also orient and train employees on their shift.

With regard to disciplining employees, the working foreman job description is silent. The Employer proffered the following documents in support of its claim that the working foremen can discipline employees. Clark issued an "Employee Counseling Written Reminder" for excessive tardiness to an operator on second shift in May 1989. At that time, Clark was lead molding technician, years before the working foreman position was created. Kozlowski was involved in the issuance of an "Employee Counseling Written Reminder" to a "molding technician trainer" on third shift for unsatisfactory work performance on March 21, 2001. Both he and then Production Manager Tonucci signed on the line designated for supervisor. The Employer's witnesses were unable to identify who actually filled out the warning, or provide any testimony concerning the circumstances surrounding its issuance. Finally, the Employer introduced five "Employee Counseling Reports" signed by Krivensky as supervisor that were issued to employees between December 2000 and June 2001. One of those reports was also signed by Tonucci. Once again, the Employer's witnesses provided no testimony concerning the circumstances surrounding the issuance of such counseling reports.

There is no evidence of any disciplinary notices issued by Clark, Krivensky or Kozlowski since the reorganization. In this regard, the record establishes that since the reorganization Spadafino has assumed authority for issuing all disciplinary notices in the

production department, and, as noted above, he considers the disciplinary role of the working foremen to be that of verbally discussing problems with employees. Moreover, Kelly testified that the Employer now emphasizes counseling employees, and not issuing discipline, as part of the Employer's team approach to problem solving. Only two disciplinary notices have issued since the reorganization, neither of which appear to involve the working foremen. Kelly further testified to a number of occasions when the working foremen disagreed with Spadafino about disciplining employees, with Spadafino preferring counseling instead. Kelly intervened as a "mediator" out of his concern that employees understand their duties. In none of these situations was discipline issued. On another occasion, Kozlowski reported to Spadafino that a technician apprentice was causing a work-related problem on his shift. Spadafino asked molding supervisor Rinaldi from the first shift to investigate the problem. Rinaldi determined that the machine and not the employee was at fault, and Spadafino asked Rinaldi to inform the employee of that determination.

The record contains conflicting testimony regarding the authority of the working foremen to send employees home during the course of their shift. Kelly testified that shortly before the last major layoff, when work was slow and employees were not fully occupied, he speculated that employees might drink and become a danger. As a result, he reminded the working foremen that they could send an employee home if the employee was inebriated or intentionally damaging the Employer's property. However, he acknowledged that such a situation has never occurred during his employment, and that he would expect the working foremen to call him or Spadafino if such a situation actually arose. Moreover, since Kelly was hired in February 2001, there is no evidence that Clark, Krivensky or Kozlowski have sent any employee home without prior authorization.

Clark testified that at some unspecified point in time, when the Employer was utilizing many "temporary employees", he sent some of those employees home for poor work performance without getting prior authorization. He claimed that he did so because there was no one else there to provide such authorization, and he simply "passed on the word" as to why the employee would not be working the next day. No other testimonial or documentary evidence was proffered regarding this testimony. Thus,

there is no evidence that the “temporary employees” were employees of the Employer, or that Clark was the working foreman at the time this occurred. Moreover, Kelly’s testimony about the circumstances in which a working foreman could send someone home does not reference the authority to send temporary employees home.

With regard to employee evaluations, the Employer proffered five documents in support of its assertion that the working foremen can evaluate employees. Kozlowski and then Production Manager Tonucci signed two “Three Month Performance Appraisals” in early 2001. However, the record does not reflect who prepared the appraisals or what affect they had or were intended to have on employee wages or other terms and conditions of employment. The other three documents were prepared by Clark, i.e., two “Three Month Performance Appraisals” and one annual review, but predate the establishment of the working foreman position. Moreover, Clark testified that the evaluations he completed were reviewed with Tonucci before they were given to the employees. Tonucci made the decision whether to retain probationary employees, and determined what, if any, pay raise was given along with the annual review. Finally, as noted above, Spadafino admitted that he has assumed responsibility for preparing the three month appraisals of probationary employees since the reorganization, and that the working foremen had no role in the preparation of the annual appraisals that were issued to all employees in early 2002.

Based upon the above and the record as a whole, I find that the Employer has failed to meet its burden of establishing that the working foremen are supervisors within the meaning of Section 2(11) of the Act. In reaching this conclusion, I note that the working foremen do not exercise independent judgment in assigning and directing the work of other employees, but rather serve as a conduit for orders and directions from higher management, and otherwise lack any of the statutory indicia of supervisory authority. See, e.g., *Quadrex Environmental Co.*, supra; *Quality Chemical, Inc.*, supra; *S.D.I. Operating Partners*, supra; *Hydro Conduit Corp.*, supra. Like the molding supervisors on the first shift, the working foremen are highly skilled employees whose ability to direct and assign work flows from their greater skill and experience rather than their supervisory authority. *S.D.I. Operating Partners*, supra. They are conduits of the decisions made with regard to the production schedule, which determines all the work

that is to be performed in the cells. *Quadrex Environmental Co.*, supra. Moreover, such work is performed on the machines in accordance with pre-established standards, and various other personnel monitor the production process to determine whether those standards are met. Thus, the primary job of the working foreman is to perform technician duties relative to the machinery in the cells for which they are responsible, and their incidental assignment of work to cell employees is limited to that which has already been scheduled and assigned by their superiors, with any further assignments and changes in assignments being routine in nature and governed by practical considerations which do not require the exercise of independent judgment. See *Millard Refrigerated Services, Inc.*, supra; *Byers Engineering Corp.*, supra. Moreover, their counseling duties and sporadic involvement in the evaluation of employees is insufficient to confer supervisory status. See *Willimette Industries, Inc.*, supra; *Feralloy West Corp.*, supra; *Chicago Metallic Corp.*, supra. In addition, even assuming that the working foremen have the authority to send temporary employees home for work related reasons, or that they can send employees home if they engage in conduct which poses a threat to safety, the exercise of such restricted and sporadic authority limited to specific and pre-determined kinds of conduct does not require the use of independent judgment sufficient to confer supervisory status. *Freeman Decorating Co.*, 330 NLRB 1143, 1144 (2000); *Loffland Bros. Co.*, 243 NLRB 74, 75, fn. 4 (1979). Finally, the fact that the working foremen are the highest ranking employees at the facility during their shift, a secondary indicia of supervisory authority (*Northcrest Nursing Home*, 313 NLRB 491, 500 (1993); *Billows Electric Supply of Northfield, Inc.*, 311 NLRB 878 (1993)), does not without more establish their supervisory status, particularly where they are instructed to contact their superiors in the event of a problem. *Mid-State Fruit, Inc.*, 186 NLRB 51 (1970).

Accordingly, I shall include the working foremen in the production and maintenance unit.<sup>6</sup>

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<sup>6</sup> The record does not reflect whether or when Krivensky will be returning to his position as working foreman, or how long Clark will continue to function as the working foreman. In view of my finding herein that the working foremen should be included in the production and maintenance unit, and noting that the parties have agreed to include Clark's regular position as a molding technician in the production and maintenance unit, Clark is clearly an eligible voter.

**c. Shipping Supervisor**

Nadine Frey has been the shipping supervisor since October 16, 2000. She was given a \$1 per hour raise at the time, and subsequently attended courses on “first time supervisor training” and sexual harassment. She began her employment with the Employer 12 years ago as a machine operator, and soon became the shipping assistant, a position she held for eight years. She then became the cell coordinator, which required her presence on the cell floor to insure that the cell operators properly enter data regarding product to be shipped. Although she initially retained her duties as cell coordinator when she became the shipping supervisor, she subsequently lost those additional duties in either late 2000 or early 2001.

As noted above, the shipping department consists of three employees: Frey, the disputed shipping assistant/specialist (herein called the shipping assistant) and the packer/ shipper. Frey shares an office with the shipping assistant and with the disputed cell coordinator. Although both Frey and the cell coordinator report directly to Szucs, the cell coordinator is not considered part of the shipping department. The packer/shipper works in an area located just outside Cell One, near the warehouse but not far from the shipping department.

Frey generally directs the work of the shipping assistant and the packer/shipper. She is responsible for all freight leaving the facility. She spends about 50% of her time doing paperwork related to her shipping function, and about 30% of her time in her office. She spends most of her time in the packer/shipper area or on the loading dock. Early each day she gets the shipping list from customer service, and provides copies to the packer/ shipper and shipping assistant. Frey, the shipping assistant, and the packer/ shipper then share the packing and labeling of product for shipment and move the product to the loading dock. Frey and the shipping assistant also spend time in the cells assisting with the movement of product from the cells to the shipping area.

Frey and the shipping assistant are also responsible for arranging shipments of finished products with the customer and freight companies. In this regard, if the customer is not picking up the product, Frey will select from two freight companies the

Employer has used for many years, one for long distance freight and one for short distance. She also makes arrangements for international shipments, which requires a different shipper. When the Employer was selecting a regular international freight company, Frey provided advice based on her long experience, and recommended the company that was eventually selected.

With regard to the hiring and transfer of employees, Szucs testified that Frey helped him in selecting employee Frances Tichey for a transfer into the shipping department. However, the record establishes that Tichey was transferred into the shipping department before Frey became the shipping supervisor. On one occasion, Szucs asked Frey to escort a job applicant around the facility. He then asked her what she thought of the applicant, and Frey replied that the applicant was a good candidate. However, Szucs admitted that he made the decision to hire the applicant.

With regard to disciplining employees, Frey has never issued any disciplinary notices to employees. However, on one occasion before she became the shipping supervisor, Szucs asked Frey to look into a complaint from the customer service manager about a missed shipment. Frey discussed the problem with then shipping assistant Tichey, and explained to Tichey that she needed to verify that everything on the shipping report gets shipped. Szucs asked Frey to put something in writing, which she did. She then requested Tichey to sign her report, but Tichey refused. There is no evidence that this incident had any impact on Tichey's terms and conditions of employment.

The record contains several incidents involving Frey and Tichey post-dating Frey's promotion to shipping supervisor. In this regard, Frey complained to Szucs about Tichey on several occasions, particularly about her attendance. Frey believed that Tichey should be disciplined. Szucs told Frey that he would "look into it", and Tichey was not disciplined. Frey also repeatedly complained to Szucs that Tichey was causing serious disruptions in the shipping department after Tichey was denied a promotion to the cell coordinator position. The situation continued for months, and Frey recommended to Szucs that Tichey be given a formal warning. Contrary to Frey's

recommendation, Szucs told Frey he was instead thinking of transferring Tichey, and he subsequently did so.<sup>7</sup>

With regard to evaluating employees, prior to the reorganization, Frey, at Szucs' request, drafted a three month review for a probationary shipping assistant, and two annual evaluations. She did not sign these documents, nor did she review them with the employees. Rather, Szucs relied upon Frey's draft to prepare the final evaluation, and he made the final decision on the evaluation based upon his own opinion of the employee. He also reviewed the final evaluation with the employee. Although Szucs testified that he relies upon Frey's draft for 90% of the evaluation, he admitted that he has also written evaluations for shipping department employees without her input. Moreover, Frey has had no role in preparing evaluations since the reorganization.

Based upon the above and the record as a whole, I find that the Employer has failed to meet its burden of establishing that the shipping supervisor is a supervisor within the meaning of Section 2(11) of the Act. In reaching this conclusion, I note that the shipping supervisor does not exercise independent judgment in assigning and directing the work of other employees, but rather serves as a conduit for orders and directions from higher management, and otherwise lacks any of the statutory indicia of supervisory authority. See, e.g., *Quadrex Environmental Co.*, supra; *Quality Chemical, Inc.*, supra; *S.D.I. Operating Partners*, supra; *Hydro Conduit Corp.*, supra. Like the molding supervisors and the working foremen discussed above, the shipping supervisor is a highly skilled employee whose ability to direct and assign work flows from her greater skill and experience rather than her supervisory authority. *S.D.I. Operating Partners*, supra. She is a conduit for the decisions made with regard to the shipping schedule, which determines all the work that is to be performed in the shipping department. *Quadrex Environmental Co.*, supra. Moreover, such work is performed in accordance with pre-established standards. As a result, her assignment of work to shipping department employees is limited to that which has already been scheduled for

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<sup>7</sup> When Frey heard a rumor on the shop floor that Tichey was being transferred, she confronted Szucs about it. He confirmed the rumor, and asked her to "write something up" about the situation. She did so, in a handwritten note dated March 22, 2001. Although the note indicates that Frey participated in the decision to transfer Tichey, Frey testified that she did not recommend a transfer, but rather recommended discipline instead.

shipment, with any further assignments and changes in assignments being routine in nature and governed by practical considerations, which do not require the exercise of independent judgment. See *Millard Refrigerated Services, Inc.*, supra; *Byers Engineering Corp.*, supra. Moreover, her counseling duties and sporadic involvement in the evaluation of employees is insufficient to confer supervisory status. See *Willimette Industries, Inc.*, supra; *Feralloy West Corp.*, supra; *Chicago Metallic Corp.*, supra.

Accordingly, I will include the shipping supervisor in the production and maintenance unit.

**6. Unit placement issues**

**a. Shipping Assistant**

The Employer would exclude the shipping assistant as lacking a community of interest with employees in the production and maintenance unit. As described above in connection with the discussion of the supervisory status of Shipping Supervisor Frey, the shipping assistant works in the shipping department with Frey and the packer/shipper. She has a desk in the Shipping Department, which is located between the loading dock and the warehouse. Both she and Frey contact shippers to arrange for delivery of product, and complete the accompanying paperwork. She and Frey also help in moving product from the production area to the loading area. She also performs the same packing and labeling functions as Frey and the packer/shipper, who the parties agreed to include in the unit. She and the packer/shipper receive their directions from Frey, who in turn reports directly to Szucs. She also conveys shipping information to the packer/shipper, and regularly visits the cell floor to communicate with cell operators regarding the proper data entry for goods being shipped. She was a cell operator before being selected as shipping assistant. She shares the same work breaks, lunch periods, locker room, and lunchroom as all other employees. Like production and maintenance employees, she punches a time clock and enjoys the same benefits.

Based upon the above and the record as a whole, I find that the shipping assistant is a plant clerical employee who shares a sufficient community of interest with the production and maintenance employees to warrant her inclusion in that unit. See *Raytee Co.*, 228 NLRB 646 (1977); *Brown & Root Co., Inc.*, 314 NLRB 19, 23-27



(1994). Accordingly, I shall include the shipping assistant in the production and maintenance unit.

**b. Cell Coordinator**

The Employer would exclude the cell coordinator as lacking a community of interest with employees in the production and maintenance unit and as a managerial employee. As noted above, the cell coordinator shares an office with the shipping supervisor and the shipping assistant, but is not considered part of the shipping department. Like the shipping supervisor and the material handler, the cell coordinator reports directly to Materials Manager Szucs. She works directly with employees in the production cells, and is responsible for insuring that operators properly enter data regarding product to be shipped. In this regard, she shares certain duties with the shipping assistant. She verifies inventory counts, and goes out on the cell floor to investigate discrepancies and reconcile conflicting records. She is also responsible for maintaining the documents that go with certain shipments. She shares the same work breaks, lunch periods, locker room, and lunchroom as all other employees. Like production and maintenance employees, she punches a time clock and enjoys the same benefits.

Based upon the above and the record as a whole, I find that the cell coordinator is a plant clerical employee who shares a sufficient community of interest with the production and maintenance employees to warrant her inclusion in that unit. See *Raytee Co.*, supra; *Brown & Root Co., Inc.*, supra. Moreover, there is insufficient evidence to support the Employer's claim that the cell coordinator is a managerial employee. In this regard, the record does not establish that the cell coordinator has the authority to formulate, determine, or effectuate the Employer's policies by expressing and making operative the Employer's decisions, or that the cell coordinator has discretion in the performance of her job independent of the Employer's established policies. *Top's Club, Inc.*, 238 NLRB 928 fn. 2 (1978); *Bell Aerospace*, 219 NLRB 384 (1975); *Raytee Co.*, supra. Accordingly, I shall include the cell coordinator in the production and maintenance unit.

**c.     Quality Assurance Analysts and Senior Quality Assurance Analysts**

The Employer would exclude the quality assurance analysts and senior quality assurance analysts (herein collectively referred to as analysts) as lacking a community of interest with employees in the production and maintenance unit, and because they are managerial employees. There are two individuals employed in each classification. All of the present analysts formerly held production positions. The analysts have a separate work area located across the corridor from the cells. They report directly to Kelly, as do the maintenance employees who the parties have agreed to include in the production and maintenance unit. Machinery is located in the analysts' work area that they use to test the quality of manufactured parts. Operator inspectors, who the parties have agreed to include in the production and maintenance unit, utilize the same machinery for testing product.

Among the duties for which the analysts are responsible is the inspection of parts received from suppliers to assure that the quality of those parts meet customer requirements. The analyst performing this function spends a significant amount of time working in the receiving area with the material handler, who the parties have agreed to include in the production and maintenance unit, and the disputed material coordinator, each of whom has an office located outside the shipping and receiving area. Analysts also work with the material coordinator in the reel-to-reel storage area, inspecting the expensive metals that are vital to the production process. An analyst also spends a significant amount of time on the cell floor inspecting parts through the end of the production process, which requires them to work directly with the operator inspectors. They also assist the operator inspectors to insure that documentation requirements are met. They may also fill in for operator inspectors on the cell floor when such inspectors are absent from work. In this regard, an analyst has been "on loan" to the production department for the past six months in order to function as an operator inspector, reporting directly to Spadafino.

One of the senior analysts has regular contact with the molding supervisors and other production employees on the cell floor. He provides guidance to the operator inspectors. He also serves as a liaison with the production department, and attends the

daily production meetings. The other senior analyst spends more time working with employees in the developmental process. Senior analysts are also responsible for calibrating the testing equipment.

All of the analysts are hourly paid, and their pay rate is in the mid-level of the wages of employees who the parties have agreed to include in the production and maintenance unit. They share the same work breaks, lunch periods, locker room, and lunchroom as all other employees. Like production and maintenance employees, they punch a time clock and enjoy the same benefits.

Based upon the above and the record as a whole, I find that the analysts share a sufficient community of interest with employees in the production and maintenance unit to warrant their inclusion in that unit. More particularly, I note that they perform production-related functions, have regular work-related contact with employees in the production and maintenance unit, and share common supervision and other terms and conditions of employment with employees in the production and maintenance unit. *Hogan Mfg.*, 305 NLRB 806, 807 (1991); *Blue Grass Industries*, 287 NLRB 274, 299 (1987); *Libbey Glass Division*, 211 NLRB 939, 940-941 (1974); *Raytee Co.*, *supra*. Moreover, there is insufficient evidence to support the Employer's claim that the analysts are managerial employees. In this regard, the record does not establish that the analysts have the authority to formulate, determine, or effectuate the Employer's policies by expressing and making operative the Employer's decisions, or that the analysts have discretion in the performance of their job independent of the Employer's established policies. *Top's Club, Inc.*, *supra*; *Bell Aerospace*, *supra*; *Raytee Co.*, *supra*. Accordingly, I shall include the quality assurance analysts and senior quality assurance analysts in the production and maintenance unit.

**7. Office clerical unit**

**a. Materials Coordinator**

The materials coordinator is primarily responsible for coordinating the receipt, storage and distribution of reel-to-reel and insert materials. He verifies that the incoming materials match the proper counts and weights. He has a desk near the shipping area next to the material handler, who the parties have agreed to include in the production and maintenance unit, and another desk located in the reel-to-reel room. He

works directly with the material handler when receiving materials. He has recently been working on a special project in the warehouse with the material handler. He reports directly to Szucs, as does the material handler. He also works with a quality assurance analyst in the reel-to-reel room when that material is received. The analyst inspects the materials for quality, while the materials coordinator records information related to the materials. The materials coordinator notifies various areas when incoming material has arrived, and is responsible for moving and distributing the reel-to-reel materials to the shop floor. He spends none of his working time in the front office area. He is paid in the lower mid-level of hourly employees. He shares the same work breaks, lunch periods, locker room, and lunchroom as all other employees. Like production and maintenance employees, he punches a time clock and enjoys the same benefits.

Based upon the above and the record as a whole, I find that the materials coordinator is a plant clerical employee who shares a sufficient community of interest with the production and maintenance employees to warrant his inclusion in that unit. See *Armour and Co.*, 119 NLRB 623, 624 (1957); *Libbey Glass Division*, supra; *Brown & Root Co., Inc.*, supra; *Raytee Co.*, supra. Moreover, there is insufficient evidence to support the Employer's claim that the materials coordinator is a managerial employee. In this regard, the record does not establish that the materials coordinator has the authority to formulate, determine, or effectuate the Employer's policies by expressing and making operative the Employer's decisions, or that the materials coordinator has the discretion in the performance of his job independent of the Employer's established policies. *Top's Club, Inc.*, supra; *Bell Aerospace*, supra; *Raytee Co.*, supra. Accordingly, I shall include the materials coordinator in the production and maintenance unit.

**b. Production Scheduler/Expediter**

Michael Figueroa is the production scheduler/expediter. He has an office in the area across the corridor from the cells, next to Spadafino's office and close to Szucs' office. He reports directly to Szucs. As noted above, he is involved in the planning of the entire production process. Utilizing the Employer's computer system, Figueroa verifies that the plant has the necessary materials and available labor when an order is placed, in order to insure that customer's requirements can be met. He attends

the daily and weekly production planning meetings during which the production schedules are established, and then distributes the schedule to the cells. In this regard, he generates the daily production sheet, which sets forth what jobs are to be run on each machine in each cell. He also notifies the toolroom and the quality assurance department of production needs in advance of the upcoming schedule, and notifies the material handler regarding the need to “pre-dry” materials for upcoming production. He expedites problem molds on the production floor as well as “hot” production orders. He has regular contacts with the molding supervisors regarding work priorities. He keeps all departments updated daily on all production schedule changes and priorities, and continually updates the Employer’s computer system to reflect those requirements. While he spends some time in the front office if he needs to discuss something with customer service, he does not have a pass to that office, and spends most of his working time outside the office area.

Figueroa was an hourly-paid employee before becoming a salaried employee in January 2003, after the petition was filed. However, the Employer and the Petitioner agree that the mode of his payment is not a factor in determining his unit placement. He continues to work on the first shift, sharing the same work breaks, lunch periods, locker room, lunchroom, and other benefits as all other employees.

Based upon the above and the record as a whole, I find that the production scheduler/expediter is a plant clerical employee who shares a sufficient community of interest with the production and maintenance employees to warrant his inclusion in that unit. See *Armour and Co.*, supra; *Brown & Root Co., Inc.*, supra; *Raytee Co.*, supra. Moreover, there is insufficient evidence to support the Employer’s claim that the production scheduler/expediter is a managerial employee. In this regard, the record does not establish that the production scheduler/expediter has the authority to formulate, determine, or effectuate the Employer’s policies by expressing and making operative the Employer’s decisions, or that production scheduler/expediter has the discretion in the performance of his job independent of the Employer’s established policies. *Top’s Club, Inc.*, supra; *Bell Aerospace*, supra; *Raytee Co.*, supra. Accordingly, I shall include the production scheduler/expediter in the production and maintenance unit.

**c. Receptionist/accounts payable clerk**

The parties agree that the receptionist/accounts payable clerk, who reports directly to Chief Financial Officer Greenwood, is an office clerical employee. She spends the majority of her time in the front office area performing typical office clerical functions. She spends the remainder of her day in other areas of the facility delivering mail and gathering information relevant to her accounts payable function. She works from 8:00 am - 4:30 pm.

As a result of my determination that the materials coordinator and production scheduler/expediter are plant clerical employees who should be included in the production and maintenance unit, the receptionist/accounts payable clerk is the sole employee in the petitioned-for office clerical unit. Recognizing that the Board will not certify a representative in a unit consisting of only one employee, the Petitioner argues for allowing the receptionist/accounts payable clerk to vote in a self-determination election to decide whether to be included in the production and maintenance unit. However, the record reveals that there are other unrepresented statutory employees at the Employer's Ansonia facility, and the evidence does not indicate whether the receptionist/accounts payable clerk shares a community of interest with such employees. Under such circumstances, a self-determination election does not appear to be appropriate, and I hereby ORDER that the petition is dismissed to the extent it seeks an office clerical unit.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

All full-time and regular part-time production and maintenance employees, including moldmakers, apprentice moldmakers, molding technicians, molding technician apprentices, operators, operator inspectors, facilities maintenance employees, the maintenance electrician, maintenance repair employees, the material handler, the packer/shipper, technician trainer, quality assurance analysts, senior quality assurance analysts, the cell coordinator, the shipping assistant/specialist, the production scheduler/expediter, the materials coordinator, molding supervisors, the shipping supervisor, and working foremen employed by the Employer at its Ansonia, Connecticut facility; but excluding all salaried employees, the receptionist/accounts payable clerk, the engineering assistant, the production planning assistant, the customer service

representative, the reel-to-reel specialist, the automation technician, the facilities manager/maintenance project specialist, the programmer analyst, and guards, professional employees and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted among the employees in the unit found appropriate herein at the time and place set forth in the notices of election to be issued subsequently.

**Eligible to vote:** those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were in the military services of the United States, ill, on vacation, or temporarily laid off; and employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements.

**Ineligible to vote:** employees who have quit or been discharged for cause since the designated payroll period; employees engaged in a strike who have been discharged for cause since the strike's commencement and who have not been rehired or reinstated before the election date; and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

The eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by International Union of Automobile, Aerospace, Agricultural, Implement Workers of America, UAW.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the

eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before February 27, 2003. No extension of time to file these lists shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

**Right to Request Review**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by March 6, 2003.

Dated at Hartford, Connecticut this 20<sup>th</sup> day of February, 2003.

/s/ Peter B. Hoffman  
Peter B. Hoffman, Regional Director  
National Labor Relations Board  
Region 34

177- 8580-3000  
177-8560-1000  
177-8560-5000  
177-8520-9200  
460-5033-7500  
440-1760-1580  
440-1760-1960